



Regulatory Affairs
1 North Jefferson Ave
St. Louis, MO 63103
HO004-11D
314-955-6851 (t)
314-955-4308 (f)

April 8, 2011

Via Email: *rule-comments@sec.gov*

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

**Re: File No. SR-FINRA-2011-013
Proposed Rule Change to Establish a Registration Category, Qualification
Examination and Continuing Education Requirements for Certain Operations
Personnel**

Dear Ms. Murphy:

Wells Fargo Advisors, LLC (“WFA”) responds to the Securities and Exchange Commission’s (“SEC” or “the Commission”) request for public comment on FINRA’s proposals to create a registration requirement for certain operations personnel. While WFA is fully supportive of efforts to ensure that investor protection mechanisms are in place in the operational areas of a firm, we believe that this rule may reach more deeply into the traditional operational ranks than necessary to accomplish this goal. There are also certain procedural aspects of the rule that we feel FINRA should modify before passage by the Commission. We submit these comments to highlight these issues.

WFA consists of brokerage operations that administer almost \$1 trillion in client assets. It accomplishes this task through 15,088 full-service financial advisors in 1,100 branch offices in all 50 states and 4,569 licensed financial specialists in 6,610 retail bank branches in 39 states.¹

¹ WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across North America and internationally. Wells Fargo has \$1.2 trillion in assets and more than 278,000 team members across 80+ businesses. Wells Fargo’s brokerage affiliates also include HD Vest Financial Services with 5,100 independent advisors and First Clearing, LLC which provides clearing

The Proposal is Overbroad in the “Covered Persons” It Reaches

FINRA’s rule proposal increases the universe of persons required to register with it and meet some continuing education requirements to include those responsible for certain described operational functions. In essence, the rulemaking describes those who would be “covered persons” and then describes the “covered functions” performed by those covered persons. As proposed, the rule proposal describes “covered persons” as:

- (1) Senior management with responsibility over the covered functions;
- (2) Supervisors, managers or other persons responsible for approving or authorizing work, including work of other persons, in direct furtherance of the covered functions; and
- (3) Persons with the authority or discretion materially to commit a member’s capital in direct furtherance of the covered functions or to commit a member to any material contract or agreement (written or oral) in direct furtherance of the covered functions.

The rule is far too broad when it reaches all “supervisors, managers or other persons responsible for *approving or authorizing* work, including work of other persons, in direct furtherance of the covered functions (emphasis added).” This definition simply could sweep in any number of employees well below the decision making level. Such a result is not needed to increase the level of protection for investors. In its rule filing, FINRA actually describes a more appropriate standard for covered persons where it states that:

“Generally, covered persons would be those persons who are directly responsible for overseeing that tasks within the covered functions are performed correctly in accordance with industry rules, firm protocols, policies and procedures, and who are charged with protecting the functional and control integrity of the covered functions for a member.”²

This description makes it apparent that the universe of covered persons is, in FINRA’s own words, limited in some respects. As probably appropriate and intended, FINRA wants the rule to cover those key persons “directly responsible” for seeing that these important tasks are done properly and with integrity. Unfortunately, the current statutory language is vague and does not succinctly convey the intent described by FINRA above. We would suggest replacing the statutory language in proposed Rule 1230(b)(6)(a)(ii) with FINRA’s formulation to read:

“Persons who are directly responsible for overseeing that tasks within the covered functions are performed correctly in accordance with industry rules, firm protocols, policies and procedures, and who are charged with protecting the functional and control integrity of the covered functions for a member.”

services to 98 correspondent clients and WFA. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

² Federal Register / Vol. 76, No. 53 15012, 15013 (March 18, 2011)

This new formulation will help drive home that the rule is not intended to sweep each and every person in the operations area into a registration scheme. In addition, with this clearer definition, Rule 1230 (b)(6)(A)(iii) referencing the registration of those able to commit material amounts of the firm's capital is no longer needed. The definition sweeps those individuals in with more clarity and little chance of confusion that could lead to a costly and unnecessary expansion of the individuals required to register.

Certain Covered Functions Need Clarification

In creating the Proposal, FINRA has enumerated those "covered functions" that would lead to operations personnel having to register. Some of the covered functions described may go too far or, at a minimum, need clarification to make certain that the new registration reaches the right personnel. The rule considers as a covered function, "[c]ontributing to the process of preparing and filing financial regulatory reports."³ The filing of financial regulatory reports is an extensive process that often reaches numerous departments in brokerage firms as many "contribute" to getting the information filed timely. To require registration of all who contribute to that process would seem burdensome, costly and unnecessary to achieve the overall comfort that FINRA desires concerning the integrity of the process. In reality, it seems that it is the development, creation and maintenance of the financial regulatory reporting task that should be the covered function, not the "contributing to the process." We think FINRA needs to revisit the wording of this covered function.

Similarly, we believe that the following covered function needs another look:

"Posting entries to a member's books and records in connection with the covered functions to ensure integrity and compliance with the federal securities laws and regulations and FINRA rules."⁴

"Posting entries" to the books and records for many firms occurs at numerous stations throughout the enterprise, and it would seem onerous to register all who have that duty as a part of their job function. The better use for the operations professional registration process should be to reach those who define that process, determine how the work is performed and approve the entries. In other covered functions, FINRA seems to recognize that distinction.⁵ In those other scenarios, it is the establishment and review ("defining and approving" in FINRA's words) of the system, not the actual ministerial entry of data, that is the covered function for which FINRA seeks registration. The SEC should ask FINRA to modify the text of this books and records covered function.

³ FINRA Rule 1230(b)(6)(B)(xii).

⁴ FINRA Rule 1230(b)(6)(B)(xiii).

⁵ See, e.g., FINRA Rule 1230(b)(6)(B)(xiii), "Defining and approving business requirements for sales and trading systems and any other systems related to the covered functions, and validation that these systems meet such business requirements;" and FINRA Rule 1230(b)(6)(B)(xiv) "Defining and approving business security requirements and policies for information technology, including, but not limited to, systems and data, in connection with the covered functions"

120 Days to Pass the Exam

FINRA has shown some understanding of transition challenges as firms begin to register individuals under the new Operations Professional designation. FINRA specifically addressed the issue of those persons who on “day one” of the rule’s effective date do not need to register but later on move into a position requiring registration as an Operations Professional. In addressing concerns raised by a number of non-clearing firms, FINRA is proposing a 120-day grace period for covered persons associated with a non-clearing member to transition into the proposed registration category.⁶ Clearing firm employees would not receive this same grace period, and would be unable to act in the Operations Professional function until passing the exam.

We believe FINRA should treat clearing and non-clearing firm employees similarly and grant the same 120-day grace period for both. Although clearing firms tend to be larger than non-clearing firms, they operate in departments, which in themselves can be small. Promotions often occur as individuals move between departments. There could be a situation where a person with operations experience worked in an area for more than two years and then takes a role requiring Operations Professional registration. Where someone transfers into a new department that requires the Operations Professional registration, denying that person the ability to perform in the function pending passage of the exam simply because she is employed by a clearing firm is unsupportable. That clearing firm department, which may or may not be any larger than that of a non-clearing firm, probably needs the work of “all hands” no less than any other firm. This extension of the grace period in no way would be a means of avoiding the Operations Professional registration, as that obligation to pass the exam remains during the 120-day period. In addition, it would seem appropriate that a clearing firm agree to have the new person supervised by someone with the registration during the 120 days they have obtain the Operations Professional license. We would ask that the SEC consider harmonizing the grace period for both clearing and non-clearing firms at 120 days.

The Proposal is Costly

While FINRA’s purpose in proposing this registration regimen is to protect customers and the marketplace, it does not appear that it has fairly balanced the benefits of the rule against its costs. It is very likely each Operations Professional individual will pay \$85 for registering (\$30 for renewals), \$260 or more for an exam and \$95 for each Form U-4(U-5) update. At many firms such as WFA, one can anticipate paying about \$475 for training material for each person that

⁶ (ii) Any person who is required to register as an Operations Professional after [insert the effective date of the rule] shall register as an Operations Professional and, if applicable, pass the Operations Professional qualification examination (or an eligible qualification examination listed in paragraph (b)(6)(D) of this Rule) prior to engaging in any activities that would require such registration; provided, however, a person associated with a non-clearing member who must pass the Operations Professional qualification examination (or an eligible qualification examination listed in paragraph (b)(6)(D) of this Rule) to qualify for Operations Professional registration shall be allowed a period of 120 days beginning on the date such person requests Operations Professional registration to pass such qualifying examination, during which time such person may function as an Operations Professional.

Ms. Elizabeth Murphy

April 8, 2011

Page 5

would be required to take the exam. As currently constructed, this broad “depth” of the rule may reach countless individuals under senior management, creating costs that simply increase steadily as one moves from smaller firms to larger firms.⁷ There is no apparent rationale justifying larger firms paying considerably more in exam and registration fees as it is arguable size and scale actually makes the firm more likely to have strong systems in place that protect investors. Accordingly, FINRA should determine whether the aim of protecting investors can be accomplished without simply pulling more line personnel into a costly registration system. Nowhere in its proposal does FINRA make the case that the registration method is the sole effective and cost-efficient means of accomplishing its investor protection goal. FINRA should give the industry flexible and less costly alternatives to help some firms meet the investor protection objectives without having to increase the costs of doing business for the firms and those same investors.

Conclusion

We believe that FINRA has done a solid job in listening to some of the comments related to this Operations Professional registration proposal and making adjustments. We hope that the SEC will take a closer look at some of the covered functions, the grace period and costs to determine if additional changes are warranted.

If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long

Director of Regulatory Affairs

⁷ Based on our current evaluation, there could be almost 300 team members that may have to register as an Operations Professional and are not eligible for any exemption or exception. A rough estimate of \$300,000 is likely a floor and not a ceiling on costs to a firm such as WFA. Scale down from that number to smaller firms and factoring in that these are not the only new regulatory costs firms will have to bear and one can see the rule will be costly and burdensome to firms of all sizes.